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Public Statement on the Declaration on the Rights of Indigenous Peoples

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The passage of the Declaration on the Rights of Indigenous Peoples on September 13, 2007 marked a milestone for the world's indigenous peoples, and for the United Nations.

The Declaration affirms that indigenous peoples are entitled to all human rights recognized in international law, without discrimination. It sets out their individual and collective rights, including those related to culture, identity, language, employment, health, education, land and resources. The Declaration emphasizes the rights of indigenous peoples to maintain and strengthen their institutions, cultures and traditions in keeping with their needs and aspirations.

While the Declaration is not legally binding, it represents "a standard of achievement to be pursued in a spirit of partnership and mutual respect".

Canada had been a longstanding supporter of the Declaration during the course of its development, and the Commission regrets that the Government of Canada felt unable to support its adoption at the final stages.

The Commission urges governments and First Nations leaders to work together in finding innovative ways to advance the principles of the Declaration, and to achieve the standards set therein. This includes addressing pressing concerns in areas such as child poverty; access to potable water, adequate housing, education, and employment opportunities; the resolution of land claims; and the extension of full human rights protection - all of which allow individuals to contribute to society and to live with dignity.

Link to Section 67 of the *Canadian Human Rights Act*

The continued existence of section 67 is not consistent with the principles of the Declaration. Part of Canada's action in responding to the Declaration must include a process to support effective repeal of this section.

Further discussions will be required on how to balance individual human rights with collective rights as articulated in the Declaration.

The Commission will look to the Declaration for inspiration in our own work.

Last Updated: 2004-07-06

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15/02/2008

Statement by Chief Commissioner, Jennifer Lynch, Q.C., before the Senate Standing Committee on Human Rights

Speaking Notes
for an appearance by
Jennifer Lynch, Q.C.
Chief Commissioner
of the
Canadian Human Rights Commission
as a witness before the
Senate Standing Committee on Human Rights

5:00 PM to 6:00 PM
February 4, 2008

Check against delivery

Madame Chair, Honourable Senators:

I am pleased to be here today as part of your study on employment equity and discrimination in the public service of Canada.

I would like to introduce my colleagues:

- Hélène Goulet, on my right, is the Commission's Secretary General.
- To her right is Natalie Dagenais, Director of Investigations.
- On my left, is Alex Dei, the Director of Employment Equity.
- To his left is Philippe Dufresne our Director of Litigation Services.

Your Committee is the only parliamentary committee dedicated solely to human rights. Obviously the Commission and the Committee share many common interests. I hope this will be the beginning of an ongoing dialogue.

In this, my first appearance before your Committee, I will begin by situating our work in employment equity within our broader mandate, then move on to provide you with some specific updates on our own progress and challenges in

employment equity. I also look forward to responding to any questions you may have.

First, our broader mandate:

Our founding legislation is the *Canadian Human Rights Act* ("CHRA"). It inspires a vision for Canada where all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have, free from discrimination.

Under the CHRA our mandate includes resolving human rights disputes and fostering public understanding and commitment for human rights through education, policy development and research. In addition, of course, we have a compliance enforcement mandate under the *Employment Equity Act*.

The two Acts, taken together, give us the opportunity to work towards leading shifts in systemic discrimination and societal change.

How do we accomplish this?

About 100 federal departments and agencies and about 500 private sector employers are within our jurisdiction.

I was very pleased, when I arrived as the new Chief Commissioner ten months ago, to join a modern organization, well structured to undertake its mandate, and supported by an enormously talented and dedicated staff.

We organize our work in three core areas:

- Dispute resolution
- Knowledge development
- Discrimination prevention, which includes our employment equity work.

Dispute Resolution:

Our dispute resolution branch receives and processes complaints of discrimination based on the 11 grounds in our Act.

In recent years we have modernized our approach to better meet the needs of those who access our services.

Our objective is to resolve disputes in a non-adversarial manner and at the earliest possible stage while ensuring that the public interest is addressed.

The accessibility of our dispute resolution process is a key consideration.

Our Act requires us to perform a type of 'triage' before dealing with any complaint – to deal only with those within our specific jurisdiction; and to not deal with those where grievance or review procedures are otherwise reasonably available.

This can be confusing for an anxious person calling in with a concern. We have designed our intake procedures to be sensitive to this, and to provide information and options where possible.

Providing opportunities for mediation or conciliation at every stage of the process is a key part of our dispute resolution system. We have experienced considerable success with this. Once a complaint is determined to be within the jurisdiction of the Commission, about half are settled.

Time-consuming investigations and continuing confrontation are minimized through the settlement process. Settlements often lead to a process of healing, as well as systemic changes within organizations.

We are getting better and faster at processing cases. The average age of cases has dropped from 25 months in 2002, to 9.1 months today.

If a case is not settled, after an investigation it goes to the Commission for a decision. The Commission has two statutory options. It can dismiss a case if it concludes that the evidence does not support the allegations. Or it can refer the case for a hearing before the Canadian Human Rights Tribunal.

About one in seven cases is referred to the Tribunal and many of these are resolved through mediation at the Tribunal.

Commission lawyers participate in Tribunal mediation and hearings that have a strong public interest. When hearings are held, they often result in decisions that advance human rights law in important ways.

Knowledge Development

A second key area of Commission activity is knowledge development. Through research, policy development and special initiatives, we ensure that the Commission can get ahead of emerging and evolving issues, providing research-based advice, and informing and influencing public debate.

Discrimination Prevention

Another core activity for us is discrimination prevention. Our prevention activities are aimed at influencing a positive shift in the culture of human rights within those organizations that we regulate. More than 1 million employees come under our jurisdiction.

The Commission works with employers to create and strengthen their internal processes for managing human rights issues and to implement training and policies with the aim of preventing workplace discrimination.

The Commission has entered into Memoranda of Understanding with many key employers. Cooperation in this regard has been excellent and productive.

Employment Equity

It is within our Discrimination Prevention Branch that our employment equity mandate is implemented. We do this through our audit role within the *Employment Equity Act*. This Act requires employers to address systemic discrimination by taking measures to remove barriers to the employment of the four designated groups.

The goal is to achieve the same level of representation, within each organization, as the level of availability by qualified group members in Canadian society.

Employers under the *Employment Equity Act* must comply with nine statutory requirements, such as the collection of workforce information, the determination of under-representation and a review of employment systems. They must develop an Employment Equity Plan explaining the steps they are taking to meet their statutory obligations.

Initially compliance was voluntary, but in 1995, Parliament revised the Act and mandated the CHRC to ensure that those obligations were enforced through audits.

The Commission has a two-stage audit process:

- First, a preliminary audit to identify the extent to which the employer is complying with the Act. To be in compliance, the employer must have a plan to eliminate barriers and gaps in the workplace.
- For those areas where there is not compliance, we negotiate undertakings.
- Later, we conduct a second "progress audit" to determine whether the employer has made efforts to achieve progress in increasing representation of the designated groups.

- If it deems it necessary to do so, the Commission can seek enforcement through the Employment Equity Review Tribunal.

The experience of the Commission in conducting compliance audits illustrates some of the challenges in accomplishing the aims of the *Employment Equity Act*.

Since 1996, the Commission has undertaken initial audits of 252 employers. In only a few audits did we find the employer to be compliant without negotiations of undertakings after the preliminary audit.

Here are the statistics on compliance:

- 90% of employers came into compliance only *after* the Commission had both completed the preliminary audit *and* reached agreement with the employers to undertake corrective measures.
- The balance – about 10% - required commencement of enforcement measures by the Commission before employers agreed to take the required measures.

After the preliminary audit, the Commission monitors the progress of employers in achieving their short-term hiring goals and long-term representation goals.

Our monitoring activities show that few organizations have met all their short-term hiring goals. This demonstrates that employers have yet to fully take on their responsibilities under the Act.

On a more positive note, there is evidence that audits conducted by the Commission contribute to increasing the representation of the designated groups in the public service. However, representation of visible minorities remains below labour market availability.

The positive impact of audits is diminished by the fact that the Commission is unable to carry out audits as quickly as we would like. The workload has increased: the number of employers subject to the Act has gone up by nearly 50 percent since 1997. Meantime, we have less resources dedicated to conducting audits today then we had in 1997.

To address this issue, the Commission has reorganized to meet the demands of the changing environment. A new audit process is being implemented. The response from employers subject to the new process has been very positive.

We are currently conducting an objective review of our resource structure to ensure that we are utilizing resources for maximum effectiveness.

As the Committee has rightly highlighted, the level of representation of visible minorities in the Public Service of Canada is unacceptable.

Clearly, as your Committee's report from last February put it: ' *we are not there yet'*. Indeed we are not even *near* there yet.

Why is this so?

In your Committee's preliminary report you concluded that a key problem was corporate culture. -*"an integral part of the way the federal public service operates."*

I completely agree. As our audit experience shows, far too often, we have to lead employers reluctantly along the path of employment equity.

Rather than seeing employment equity as integral to values and strategic outcomes, too often departments see it as another burdensome requirement that has to be met.

Employment equity should not be seen as something within the job description of an employment equity manager, to be monitored as a statistic. Rather, achieving employment equity should be articulated in the organization's vision, values and objectives, and be supported both in its business plans and through institutionalized incentives such as performance measurement and accountabilities for all managers.

To some extent, the private sector has matured its understanding and appreciation of employment equity.

Some private sector employers see employment equity not as an imposition but rather as good business. They realize that having a workforce that represents the diversity of their customers helps them to better serve the clientele and maximize profits.

As the recently released 2006 Census data re-confirms, Canada is one of the most multi-ethnic, multi-racial nations in the world.

In order to better serve all Canadians, our Public Service must reflect that reality. Having a workforce that represents Canadian diversity will help departments to better serve all Canadians.

My colleagues and I would be pleased to answer your questions.

Last Updated: 2004-07-06